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January 30, 2001

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JAN 30 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FILE No. 023976-0008

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ITTA Reply Comments for Phase 2 of CAM and ARMIS Reporting Requirements Proceeding, CC Docket No. 00-199 /

Dear Ms. Salas:

Please find enclosed an original and four copies, plus one copy for date-stamp return receipt purposes, of the reply comments of the Independent Telephone & Telecommunications Alliance in *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Notice of Proposed Rulemaking in CC Docket No. 00-199, FCC 00-364 (rel. Oct. 18, 2000).

If you have any questions or comments related to the submission of these reply comments, please do not hesitate to contact me directly at (202) 637-1008. Thank you for your consideration in this matter.

Sincerely yours,

Benoit Jacqmotte

Enclosures

RECEIVED

JAN 30 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Review --	)	CC Docket No. 00-199
Comprehensive Review of the Accounting	)	
Requirements and ARMIS Reporting	)	
Requirements for Incumbent Local Exchange	)	
Carriers: Phase 2 and Phase 3	)	

PHASE 2 REPLY COMMENTS OF THE
<u>INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE</u>

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January 30, 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Review --	)	CC Docket No. 00-199
Comprehensive Review of the Accounting	)	
Requirements and ARMIS Reporting	)	
Requirements for Incumbent Local Exchange	)	
Carriers: Phase 2 and Phase 3	)	

PHASE 2 REPLY COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance (ITTA) submits its reply comments in the above-referenced proceeding.[1]

I. INTRODUCTION

Based on the record in this proceeding, the Commission should implement the dual two percent of access line and $7 billion dollar aggregate affiliated ILEC revenue reporting threshold proposed by ITTA in its comments. This standard is consistent with the Commission's historical commitment to the principle of differentiation among classes of carriers and the Commission's own proposal to increase the indexed revenue threshold to $200 million. Unlike that proposal, the standard proposed by ITTA has the additional benefit of simplifying the Commission's rules. It would automatically index to account for industry growth, and would be consistent with the Congressionally-endorsed two percent standard and the Commission's own midsize carrier definition.

The record in this proceeding contains broad support for a midsize company exemption from CAM requirements and ARMIS reporting, paving the way for the Commission

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[1] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, Notice of Proposed Rulemaking in CC Docket No. 00-199, FCC 00-364 (rel. Oct. 18, 2000) (*2000 Review Notice*).

to implement substantial reform. No commenter has suggested that midsize companies should be subject to the same regulatory burdens as larger carriers. Instead, while there is some debate as to where the threshold should be placed and how much to reduce the reporting burden, there is broad support among carriers, NARUC, and many state commissions for the Commission's principle of differentiation.

Because the record does not demonstrate that the current regulatory burdens are still necessary in the public interest, the Commission should eliminate its CAM requirements and ARMIS reporting for midsize carriers, thereby granting them true Class B status. Commenters to the contrary[2] have not engaged in a proper assessment of the benefits and burdens of requiring such reporting obligations for midsize carriers, as mandated by the Commission's Section 11 Biennial Review. While the Commission's proposal to streamline ARMIS is not as detailed as the Commission's other proposals, it is clear that the Commission has failed to assess the considerable burden associated with ARMIS data collection. This burden will continue to hamper midsize ILECs as long as they have *any* ARMIS reporting obligations.

II. THE RECORD REFLECTS WIDESPREAD SUPPORT FOR THE COMMISSION'S LONGSTANDING PRINCIPLE OF DIFFERENTIATED BURDENS

The Commission should adopt the dual two percent of access line or $7 billion dollar aggregate affiliated ILEC revenue standard described in ITTA's comments. The record contains broad support for the Commission's long-standing commitment to the principle of differentiation among carriers. The Commission has long recognized that regulatory burdens have a greater per-line impact on midsize carriers than they do on larger carriers. A broad exemption based on the ITTA standard would be consistent with this basic truth, and the

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[2] *See, e.g.*, NARUC Comments at 10; AT&T Comments at 10; WorldCom Comments at 10.

Commission's own proposal to create a holding-company threshold for CAM requirements and ARMIS reporting obligations.

This exemption from these regulatory requirements would not affect midsize carriers' obligations to comply with the Commission's underlying cost allocation rules in any way. The Communications Act of 1934, as amended (Act), and the Commission's rules both prohibit any carrier, regardless of size, from subsidizing competitive services with non-competitive ones.[3] In addition, the Commission's rules contain detailed cost allocation rules to prevent such subsidies from harming ratepayers.[4] All midsize carriers, whether they are subject to CAM requirements and ARMIS reporting or not, will continue to comply with Parts 32, 64, 36, and 69 of the Commission's rules.

Several commenters who argue in favor of retaining CAM requirements miss this point.[5] The New York Commission argues against the proposed "elimination of all cost allocation requirements for midsize carriers," confusing CAM requirements with the underlying cost allocation compliance obligations.[6] Similarly, AT&T and WorldCom have failed to assess independently the limited benefits and high burdens of the CAM requirements for midsize carriers, focusing instead on the general business operations and size of a few midsize carriers and the cost allocation rules themselves, without regard to the large burdens the Commission's specific reporting requirements impose on midsize carriers as a class.[7] As the Wisconsin Commission

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3 47 U.S.C. § 254(k); 47 C.F.R. § 64.901.

4 47 C.F.R. § 64.901.

5 *See, e.g.*, Comments of New York Department of Public Service (New York Commission) at p. 2, WorldCom Comments at p. 10, AT&T Comments at p. 10.

6 New York Commission Comments at p. 2.

7 WorldCom Comments at p. 10; AT&T Comments at p. 10.

points out, if the need were to arise, the Commission would retain the authority to verify compliance.[8]

In its comments, NARUC endorses the principle of differentiated burdens and additional relief for midsize ILECs by accepting the Commission's proposal to increase the indexed revenue threshold to $200 million.[9] Several state commissions, including those of Idaho, Florida and North Carolina, reiterate this view in their comments.[10] By expressing support for the principle of differentiated burdens between midsize and larger ILECs, these commenters have cleared the way for the Commission to eliminate these burdensome regulatory requirements as they currently apply to midsize carriers.[11]

The Commission has long differentiated between carriers on the basis of size and resources and continues to be guided in its assessment of regulatory benefits and burdens in many of its current rulemaking proceedings.[12] In the 2000 Review Notice, the Commission has paid particular attention to the benefits and burdens of continued regulation on midsize carriers in light of the explicit mandate set forth in the 1996 Act and the Independent Telecommunications Consumer Enhancement Act of 2000.[13] The record supports continued differentiation among carriers.

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8 The Wisconsin Public Service Commission (Wisconsin Commission) Comments at p. 21.

9 NARUC Comments at p. 10, stating: "These streamlining measures along with the additional Class A reporting reform measures and the proposed increase in the revenue threshold to $200 million proposed in the instant NPRM appear to be more than adequate relief measures for mid-size ILECs at this time."

10 Idaho Public Utilities Commission (Idaho Commission) Comments at p. 8; North Carolina Utilities Commission – Public Staff (North Carolina Commission) Comments at p. 5; Florida Public Service Commission (Florida Commission) Comments at p. 12. The Wisconsin Commission advocated increasing the holding company revenue threshold, if this calculation were used in establishing a reporting and accounting threshold. *Id.; see also* Sec. III, describing the Wisconsin Commission's approach to determining reporting thresholds.

11 NARUC and other state commission comments discussing the elimination of individual Class A accounts are irrelevant to the question of midsize carrier filing requirements, because the Commission already permits those carriers to file CAMs and report under ARMIS at the Class B level of accounting detail.

12 *See, e.g., Local Competition and Broadband Reporting,* Second Notice of Proposed Rulemaking in CC Docket No. 99-301, FCC 01-19 (rel. Jan. 19, 2001), ¶ 13.

13 H.R. 3850, 106th Cong. (H.R. 3850).

III. A DUAL TWO PERCENT AND SEVEN BILLION DOLLAR STANDARD IS THE BEST WAY TO DIFFERENTIATE ALL SMALL AND MIDSIZE CARRIERS

While NARUC and several state commissions have endorsed an indexed $200 million threshold for differentiating between carriers for CAM requirements and ARMIS reporting, the Commission should adopt a dual two percent of access line and $7 billion dollar aggregate affiliated ILEC revenue thresholds in connection with its Biennial Review reforms.[14] Under this standard, no operating company would be subject to CAM requirements and ARMIS reporting obligations whose holding company (i) controlled less than two percent of access lines in the aggregate nationwide *or* (ii) had aggregate affiliated ILEC revenues of less than $7 billion.

The two percent standard is a simple and straightforward threshold to use for purposes of differentiation. At least one state commission currently uses the number of access lines controlled by carriers as part of its calculation for determining an ILEC reporting and accounting threshold under its own regulations.[15] Unlike the midsize carrier standard now used for accounting purposes, however, the two percent standard takes into account the recent explosive growth in the nation's telecommunications sector. As previously demonstrated, the Commission has ample access to line count information, rendering the determination of line count information a straightforward and simple process.[16]

Congress has endorsed the two percent standard as a proper manner of differentiating between carriers in both the 1996 Act and H.R. 3850. The two percent standard is self-indexing and consistent with the intent of the 1996 Act.[17] The Commission also has

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[14] ITTA proposed in its comments (p. 12) that the Commission adopt the same reporting threshold for midsize ILECs endorsed in both Section 251(f)(2) of the Act and H.R. 3850, *viz.,* two percent of the subscriber lines installed in the aggregate nationwide.

[15] *See* Wisconsin Commission Comments at p. 21.

[16] *See* ITTA Comments at pp. 15-16.

[17] Section 402(c) of the 1996 Act requires the Commission to index its revenue threshold annually for inflation in connection with its classification and reporting regimes under Part 43 and Sections 32.11 and 64.903 of its rules.

experience implementing the $7 billion threshold as a manner of differentiating between carriers, and the Commission should index this standard as well. ITTA submits that the "two percent-seven billion" standard is the simplest, most effective manner of differentiating between carriers in a manner consistent with both Congressional intent and Commission precedent.

IV. THE COMMISSION SHOULD REJECT THE INAPPROPRIATE JUSTIFICATIONS FOR CONTINUED MIDSIZE CARRIER REPORTING

A. THE BURDENS OF MANDATORY REPORTING OUTWEIGH THE BENEFITS

The record fails to demonstrate that sufficient midsize carrier CAM and ARMIS data exist to permit regulators to draw generally-applicable policy conclusions. Commenters to the contrary rely on inapplicable anecdotes and fail to make any compelling showing that such data are essential. The Wyoming Public Service Commission (Wyoming Commission), for example, improperly claims that exempting midsize carriers from filing ARMIS would undermine the ability of state and federal regulators to monitor service quality. Citing two recent transactions, the Wyoming Commission suggests ARMIS reporting provides service quality information important to its regulatory needs.[18] The Commission's ARMIS reform proposals in this proceeding, however, do not affect service quality reporting. In addition, as discussed in ITTA's comments in the service quality proceeding,[19] service quality reports are no longer necessary in the current marketplace and the Commission should eliminate the 43-05 service quality report in accordance with the Section 11 mandate.

The Wyoming and Wisconsin Commissions' claim that broadband data reporting is necessary and should be collected through ARMIS[20] also fundamentally misses the mark. The Commission, through the *Local Competition and Broadband Report*, already collects adequate

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[18] Wyoming Commission Comments at p. 3.

[19] *See 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, Notice of Proposed Rulemaking in CC Docket No. 00-229, FCC 00-399 (rel. Nov. 9, 2000) (Service Quality Notice).

data to fulfill its Congressional mandate under Section 706 of the 1996 Act.[21] While the Commission may have an interest in these broadband infrastructure data, it fails to articulate, even in the 2000 Review Notice, any specific use it plans to make of such data. While alleging in a general manner that infrastructure data in the past have "permitted [the Commission] to make informed decisions to protect against degradation and outmoded network capabilities,"[22] the Commission no longer conducts any detailed review of carrier infrastructure investments under Section 214 of the Act. Furthermore, the Commission has repeatedly emphasized its reliance on competition to drive carrier investment decisions. If the Commission were to need infrastructure data of this type in the context of a particular proceeding, it would less burdensome and equally effective for the Commission to request the data on an *ad hoc* basis at that time, in a manner that is narrowly tailored to the issue at hand.

Additionally, even if midsize ILECs were required to submit broadband infrastructure and other advanced services data through ARMIS that are beyond the current scope of FCC Form 477, the data would still be woefully incomplete. For a true picture of broadband infrastructure to emerge, data from *all* providers of broadband services, including the dominant cable and emerging satellite providers, would be required. In any event, the Commission has recently proposed expanding its Local Competition and Broadband Report to cover much of this very data. It is beyond argument that the Commission does not need to collect this information twice.

The value of federal CAM requirements and ARMIS reporting as it relates to midsize carriers is further called into question by the state commissions' response to the

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20 Wyoming Commission Comments at p. 4; Wisconsin Commission Comments at pp. 19-20.

21 *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Report and Order in CC Docket No. 98-146, FCC 99-5 (rel. Feb. 2, 1999); *Local Competition and Broadband Reporting*, Report and Order in CC Docket No. 99-301, FCC 00-114 (rel. Mar. 30, 2000).

Commission's proposals. For example, while two percent carriers file federal CAMs and report under ARMIS for their operations in seven states, only three of those state commissions filed comments in this proceeding (New York, Nebraska, and North Carolina). None of those state commissions opposed continued differentiation among carriers.

Indeed, several state commissions that have experience with midsize carriers expressed support for the Commission's specific proposal to eliminate CAM requirements for midsize carriers.[23] The Utah Commission, which receives data from one Sprint carrier, "generally supports reduced accounting and reporting requirements for midsize carriers."[24] The Public Utility Commission of Oregon (Oregon Commission) and two consumer advocacy organizations endorse the elimination of CAM requirements for midsize carriers.[25] In its comprehensive analysis of the reforms proposed by the Commission, the Wisconsin Commission also endorses elimination of CAM requirements for midsize ILECs and even suggests that annual certification filing and attestation requirements are unnecessary, "consistent with the treatment afforded carriers with operating revenues below the indexed revenue threshold."[26] Conversely, while the Wyoming and Wisconsin Commissions call for continued ARMIS reporting by midsize carriers, no midsize carrier that is subject to CAM requirements or ARMIS reporting currently operates in either state.

Generalized claims that CAM requirements and ARMIS reporting by midsize carriers produce key data are overstated. For example, NARUC claims that all of the ARMIS reports are important to understand ILEC local exchange and access operations, and without this basic information, the Commission and state commissions will be "hampered" in carrying out their

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[22] 2000 Review Notice at ¶ 65.

[23] *See, e.g.*, Comments of the Utah Public Service Commission and Utah Division of Public Utilities (UPSC-UDPU Joint Comments) at ¶¶ 12 and 13, indicating the two governmental organizations "generally support reduced regulation for midsize carriers."

[24] Utah Commission Comments at p. 4.

[25] Oregon Commission Comments at p. 7; OCC-NASUCA Joint Comments at p. 10.

regulatory responsibilities.[27] This claim cannot be supported by the actual characteristics of the data submitted by the midsize reporting companies. As explained in ITTA's initial comments, only six percent of all access lines currently covered under the Commission's ARMIS reporting regime are served by midsize carriers.[28] These reporting operating companies range dramatically in size and operate in a wide variety of circumstances. Any attempt to draw class-wide or industry-wide conclusions from such a limited data set from vastly different carriers would be arbitrary and fruitless.

B. Commenters Substantially Underestimate the Burden of ARMIS Reporting on Midsize Carriers

In its comments, NARUC claims that "ARMIS reporting does not present a significant burden to the carriers."[29] This claim, repeated by IXCs and state commissions in their comments,[30] demonstrates a misunderstanding of the burdens imposed by the Commission's current reporting requirements. The gathering and compilation of the data in the format prescribed by the Commission represent a substantial burden to a midsize carrier. Even the largest midsize carrier serves only a fraction of the number of subscribers of a larger carrier. As a result, as ITTA explained in its initial comments, the cost of a midsize carrier ARMIS filing can run to several dollars per customer per year. There can be little doubt that the benefits of midsize carrier CAM requirements and ARMIS reporting are far outweighed by the lop-sided burdens of generating this incomplete data set.

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[26] Wisconsin Commission Comments at p. 21.

[27] NARUC Comments at p. 9. These remarks are echoed by the Maryland Public Service Commission (Maryland Commission) in its comments at p. 6.

[28] According to *Statistics of Communications Common Carriers (1999)* (Table 2.6) the total number of switched access lines reported in the U.S. is 174,712,492. The number of switched access lines of the reporting midsize ILECs is 10,918,023.

[29] NARUC Comments at p. 9.

Nor would it impair the activities of the Rural Utilities Service (RUS) if the Commission declared all midsize carriers to be Class B carriers. While the RUS suggests that "[m]aintaining the Class A accounts makes it easier for RUS to evaluate loan security issues,"[31] RUS's own rules require borrowers subject to the Commission's jurisdiction only to maintain accounts and records in accordance with the Commission's rules.[32] The RUS, therefore, successfully evaluates loan security issues for Class B carriers every day based on Class B accounting. Any Commission decision to grant midsize carriers true Class B status and thereby eliminate their CAM requirements and ARMIS reporting obligations would not put RUS at risk.

V. CONTINUED ARMIS REPORTING IN ANY FORM WILL NOT LIGHTEN THE BURDEN APPRECIABLY

While streamlining the ARMIS reports would lighten the ARMIS burden somewhat for midsize carriers, the lion's share of the ARMIS burden is not in completing and filing the form, but, rather, in the continuous process of compiling and gathering the underlying data in an "ARMIS-friendly" format. If the Commission continues to require *any* ARMIS reporting, this burden will not be lightened appreciably. While the Commission's proposals to streamline ARMIS lack the detail of some of its other proposals,[33] it is clear that the 2000 Review Notice does not adequately take into account this basic truth. In addition, the comments of NARUC, the IXCs and the state commissions fail to clarify these issues or to provide any meaningful guidance to the Commission because the commenters do not engage in a proper analysis as mandated by Section 11. For example, with respect to the Commission's proposals related to the 43-01 through 43-04 reports, the Oregon Commission does not comment on 43-01 because it does not use this report, but

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[30] *See, e.g.*, Idaho Commission Comments at p. 7; OCC-NASUCA Joint Comments at p. 12; MPSC Comments at p. 6; WorldCom Comments at p. 10 and AT&T Comments at p. 10 (both claiming that midsize ILECs are large companies with many resources).

[31] RUS Comments at p. 2.

[32] *See* 7 C.F.R. § 1770.11(a).

it opposes the elimination of the 43-02, 43-03 and 43-04 reports.[34] Obviously, this analysis fails to assess whether data from the 43-02, 43-03 and 43-04 reports could be aggregated into the 43-01 report.

VI. CONCLUSION

Because the record contains no compelling justification for continued reporting by midsize carriers that would support a conclusion that these requirements are "necessary in the public interest," the Commission should eliminate its CAM and ARMIS reporting requirements for midsize carriers.

Respectfully submitted,

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[33] *See generally* 2000 Review Notice at ¶¶ 64-86.

[34] Oregon Commission Comments at p. 7.